* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: August 2nd, 2007

\+ CRL. REV. P. No. 236-38/2006

S.C.CHADDHA & ORS. .....Petitioner
Through Mr. Nalin Tripathi, Advocate

versus

STATE OF DELHI ..... Respondent
Through Mr. O.P.Saxena, APP

CORAM:
Mr. Justice S. Ravindra Bhat

. Whether reporters of local papers may be allowed to see the judgment.? Yes

. To be referred to the Reporter or not? Yes

. Whether the judgment should be reported in the Digest? Yes

Mr. Justice S. Ravindra Bhat: (Open Court)

1. The present revision petition is preferred against an order dated 27.9.2005 of the learned Metropolitan Magistrate (M.M). The Petitioners were charged under section 420/ 120B of Indian Penal Code (IPC).

2. The brief facts necessary to decide this petition are that a complaint was filed against the accused persons on the allegation that the complainant, V.K. Anand was a Civil Engineer by profession, working as a builder and contractor. He was allegedly approached by Accused No.1 alleging himself to be chairman and Managing Director of various companies for the construction of two factories in Rajasthan. During the course of their dealing the complainant

agreed to participate in the products to be brought up by Petitioner no.1. The complainant thereafter agreed to become Executive director of the companies Tefcil Marbles Ltd., and Tefcil Breweries Limited with the power to operate accounts and do other things. The complainant was appointed Executive Director on the payment of Rs.2, 00,000/- to Transnational Export and Financial Corporation India Ltd.

3. The Petitioner no.2 allegedly applied to the Registrar of the Companies for incorporation of the said two companies. The name of the complainant and his wife figured as subscribers in the Memorandum and Articles of Association. Thereafter the complainant was asked for a sum of Rs.50,000/- on the pretext of meeting the day to day expenses of the company. The complainant was also asked to enrol other members for the companies. It is alleged by the complainant that he made efforts and enrolled members, thus collecting an amount of Rs.3,95,000/- in Tefcil Marbles and further amount of Rs.1.3 lakhs, in Tefcil Breweries Limited. A sum of Rs.5,25,000/- was given to the Accused No.1 through cash, cheque and draft. These also included amounts paid earlier to him.
4. The complainant further alleged that accused persons siphoned the money by showing fake expenses and monies were mis-appropriated by Petitioner No.1 in connivance with Petitioners No.2 & 3. A statutory report presented on 12.1.96 was rejected by the members and allegedly on inquiry it was revealed that a sum of Rs.1,40,000/- in cash was paid to one R.P. Tyagi of Natraj Cinema for his share in M/s. Transnational Export and Financial Corporation India Ltd., and the remaining amount of Rs.7,05,000/- had been diverted to compensate to the loss of Transnational Export and Financial India Ltd. It was alleged that the share certificates issued to the members were forged as they did not bear the common seal of Transnational

Export and Financial Corporation India Ltd. The complainant allegedly asked the Petitioners to return the amount collected by him as share money but the same was not returned. The Petitioners were alleged to have thus committed fraud by manipulating the records. The companies, i.e TEFCIL Marble Ltd. and TEFCIL Breweries Ltd. were formed in accordance with law. The Petitioners and the complainant were allegedly its directors.

5. The Learned counsel for the Petitioners contended that the company issued shares; the share certificates were issued under the common seal of the company. Likewise the accounts were audited by a chartered accountant and regularly submitted to the Registrar of companies. These clearly established that funds were not misappropriated. The Learned counsel further submitted that the grievance of the Complainant is that he being a share holder of the company was not allowed to operate the bank account.

6. The learned counsel has further submitted that the dispute is of a civil nature and the remedy for the complainant lies under the Companies Act. The complainant aggrieved with not being allowed to operate the bank account made a false and frivolous allegations against the Petitioners. The counsel further submitted that the court below has exceeded its jurisdiction by framing charge on the subject on which there is a specific bar under sections 241 and 242 of the Companies Act, against the institution of criminal proceedings.

7. The trial court by its order dated 27.9.2005 charged the Petitioners under Section 420/120-B of the Indian Penal Code. The extracts of the order dated are as follows;

> *"A careful perusal of the complaint lodged by the complainant clearly shows the deceitful manner in which he along with other persons was induced by the accused persons to invest their hard earned money in the projects of the accused persons and the complaint further describes how this money has been cleverly siphoned off by the accused persons. The complainant has narrated in details the acts and omissions on the part of the accused which does create strong suspicion against the accused persons that*

they had dishonest intentions right from the beginning. Even the perusal of the charge sheet would show that the accused persons got invested about Rs.32,00,000/- by making influential persons their director in the company and as per the statutory reports about 20 directors were removed between the period 1987 to 1992 and no business was done by the company floated by the accused persons and the entire money has been shown to have been consumed by the preparing false documents and thereafter other companies were incorporated by the accused persons to cheat the innocent people at large.

The contentions of the counsel for the accused that no offence under Penal Code is made out against accused persons also does not appear to be tenable. An act may invite civil as well as penal consequence and where the action of the person invites civil as well as penal consequence, it is not open for him to say that he is liable to be prosecuted only under one or the other law. The mis-management of the affairs of the company by the accused persons as averred in the complaint, in my considered opinion, are liable for action under the companies Act as well as the penal code in as much as the action of the accused persons does constitute an offence. Hence, the authorities relied by the counsel for the accused are not applicable in the present set of facts."

8. The essence of the allegations, which persuaded the trial Court to frame charges, was that several persons were induced to pay large amounts, by the promise of becoming shareholders in companies. The monies so collected were not deposited; indeed no bank accounts were opened by those companies. The accused, instead, deposited – and later withdrew them from the account of M/s Tefcil Export and Financial Corporation of India Ltd. Prima, facie, these pointed to commission of the offences the petitioners were charged with.

9. So far as provisions under Section 241 and 242 of the Companies Act are concerned, there is textually nothing indicating a bar from prosecuting alleged offenders under the IPC provided the ingredients of the particulars are made out.

10. It is well settled that while framing charges, the Court has to consider the *prima facie* materials to determine whether they point to grave suspicion of commission of the offence by the accused. The is not to be confused with proof that has to be established, or the standard of proof required – both

of which are the subject matter of trial.

11. On a careful consideration of the materials and the order of the trial Court, I find no infirmity or jurisdictional error, calling for interference in revisional jurisdiction. The petition is therefore rejected as unmerited without any order as to costs.

(S.RAVINDRA BHAT)
JUDGE

AUGUST 2nd, 2007